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BEFORE THE
ILLINOIS COMMERCE COMMISSION

THE DEPARTMENT OF TRANSPORTATION)
OF THE STATE OF ILLINOIS, for and)
on behalf of the People of the) DOCKET NO.
State of Illinois) T12-0163
-vs-)
BNSF RAILWAY COMPANY, f/k/a)
BURLINGTON NORTHERN SANTA FE)
RAILWAY; UNION PACIFIC RAILROAD)
COMPANY; KANSAS CITY SOUTHERN)
RAILWAY COMPANY; ILLINOIS CENTRAL)
RAILROAD COMPANY, as successor to)
C & A Railroad; and unknown owners)
Petition for approval of the)
taking or damaging of certain)
property owned by a common)
transportation carrier in)
St. Clair County, Illinois by)
exercising the right of eminent)
domain, Parcel No. 8015122 - Job)
No. R-98-015-00.)

Thursday, April 25, 2013

Springfield, Illinois

Noticed for 11:30 a.m.; actual start time 12:20
p.m.

BEFORE:

TIMOTHY DUGGAN, ALJ

L.A. COURT REPORTERS, LLC, by
Laurel Patkes, Reporter
CSR #084-001340

1 APPEARANCES:

2 DOUG FELDER
203 N. LaSalle Street
3 Suite 2300
Chicago, Illinois 60601

4
(Appearing on behalf of
5 Petitioner.)

6 BOB PRENDERGAST
DALEY MOHAN GROBLE
7 55 W. Monroe Street
Suite 1600
8 Chicago, Illinois 60603

9 (Appearing on behalf of BNSF
Railway Company via
10 videoconference.)

11 MACK SHUMATE
101 N. Wacker Drive
12 Suite 1920
Chicago, Illinois 60606

13
(Appearing on behalf of Union
14 Pacific Railroad Company via
videoconference.)

15
JOE VON DE BUR
16 527 E. Capitol
Springfield, Illinois 62701

17
(Appearing on behalf of staff of
18 the Illinois Commerce
Commission.)

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I N D E X

WITNESS	DIRECT	CROSS
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CHERYL KEPLAR

By Mr. Felder	9	
By Mr. Prendergast		16
By Judge Duggan		18

EXHIBITS

IDENTIFIED	ADMITTED
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Petitioner's Exhibit A	10	20
Petitioner's Exhibit B	11	20
Petitioner's Exhibit C	12	20

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PROCEEDINGS

JUDGE DUGGAN: Pursuant to the authority vested in me by the State of Illinois and the Illinois Commerce Commission, I now call Docket T12-0163 for hearing.

May we have the appearances starting with the Department of Transportation?

MR. FELDER: Yes, sir. Good afternoon, Your Honor. Doug Felder (F-e-l-d-e-r) for the Department of Transportation. My address is 203 North LaSalle Street, Suite 2300, Chicago, 60601. My phone is (312) 634-3509.

JUDGE DUGGAN: Thank you.

BNSF?

MR. PRENDERGAST: Good afternoon, Your Honor. Bob Prendergast (P-r-e-n-d-e-r-g-a-s-t) from Daley Mohan Groble, 55 West Monroe Street, Suite 1600, Chicago, 60603. Phone is (312) 422-0799 on behalf of BNSF Railway.

JUDGE DUGGAN: Union Pacific?

MR. SHUMATE: Yes. My name is Mack Shumate (S-h-u-m-a-t-e). I'm an attorney for the Union

1 Pacific Railroad Company. Our offices are at 101
2 North Wacker Drive, Suite 1920, Chicago, Illinois
3 60606. Telephone number area code (312) 777-2055.

4 JUDGE DUGGAN: Okay. Anybody entering an
5 appearance for Kansas City today?

6 MR. STOEHR: No, they're not, Your Honor.

7 JUDGE DUGGAN: Okay. Then someone spoke up and
8 said, no, they're not.

9 MR. STOEHR: I'm Paul Stoehr (S-t-o-e-h-r).

10 JUDGE DUGGAN: So you're in the room sitting
11 but you're not going to enter your appearance today,
12 correct?

13 MR. STOEHR: Correct.

14 JUDGE DUGGAN: Okay. Anybody entering an
15 appearance for Illinois Central today?

16 No one is speaking up on that one.

17 And Commission staff?

18 MR. VON DE BUR: Joseph J. Von De Bur, Rail
19 Safety Specialist for the Illinois Commerce
20 Commission, 527 East Capitol Avenue, Springfield,
21 Illinois 62701.

22 JUDGE DUGGAN: All right. Do we have witnesses

1 today?

2 MR. FELDER: Yes, sir.

3 JUDGE DUGGAN: Just one?

4 MR. FELDER: Just one.

5 JUDGE DUGGAN: Would you raise your right hand?

6 (Whereupon the witness was sworn

7 by Judge Duggan.)

8 JUDGE DUGGAN: Thank you very much.

9 Do you want to proceed?

10 MR. FELDER: Thank you.

11 JUDGE DUGGAN: Do we have exhibits?

12 MR. FELDER: Yes, sir.

13 JUDGE DUGGAN: Can you tell me how many you've

14 got?

15 MR. FELDER: In this proceeding, we have

16 Exhibit A, a legal description, Exhibit B a plat,

17 Exhibit C is also a plat showing the road

18 improvement, and then I have, depending on whether

19 you'd like to mark them or not, I have title

20 commitments and title information relating to the

21 updated status of the title and certain disclaimers

22 that have been provided by certain parties.

1 JUDGE DUGGAN: Okay. Now, we've not had a
2 previous hearing in this docket, have we?

3 MR. FELDER: Correct.

4 JUDGE DUGGAN: Okay. So whatever title
5 commitments and updates you have are internal to
6 yourself. This is not updating evidence. Okay.

7 You say plat. Plat C is road
8 improvements and what is plat B?

9 MR. FELDER: Plat B is a plat of the taking of
10 a parcel that is being taken.

11 Plat C is a similar plat but it shows
12 the other information including the proposed road
13 improvement.

14 JUDGE DUGGAN: Okay. And you're seeking a fee
15 simple interest, is that correct?

16 MR. FELDER: Yes, sir.

17 JUDGE DUGGAN: And you noted that Illinois
18 Central and Kansas City are not appearing today, is
19 that correct?

20 MR. FELDER: That's correct.

21 JUDGE DUGGAN: And have you determined -- you
22 can do this by evidence, but a preliminary matter

1 here, have you determined that the title company is
2 asserting that they have no interest or do you have
3 disclaimers -- which one?

4 MR. FELDER: At this point we have both. The
5 title company is determining they have no interest
6 because we have received disclaimers and/or quitclaim
7 deeds. Kansas City Southern in particular quit
8 claimed any interest. The IC disclaimed any
9 interest.

10 MR. SHUMATE: And Union Pacific.

11 MR. FELDER: And Union Pacific just filed.

12 That's the one you filed yesterday,
13 right, Mack?

14 MR. SHUMATE: Yes.

15 MR. FELDER: Union Pacific also disclaimed any
16 interest in this property and has e-filed it I
17 believe as a pleading in this proceeding.

18 JUDGE DUGGAN: Okay. And I think her testimony
19 would be sufficient that the original title searches
20 show that there may be some possible interest, and
21 then with these disclaimers/quit claims that the
22 updated title work does not...clears a couple

1 parties, whichever ones that is.

2 Mr. Felder, you want to proceed?

3 MR. FELDER: Thank you.

4 CHERYL KEPLAR

5 called as a witness herein, on behalf of the
6 Petitioner, having been first duly sworn on her oath,
7 was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. FELDER:

10 Q. Ms. Keplar, would you please state your
11 name and spell it for the court reporter?

12 A. Cheryl Keplar; C-h-e-r-y-l K-e-p-l-a-r.

13 Q. And what are your duties and
14 responsibilities with the Department of
15 Transportation?

16 A. I am a condemnation engineer for
17 District 8.

18 Q. And as a condemnation engineer for
19 District 8, are you familiar with the district's
20 proposed improvement plans to relocate Illinois
21 Route 3 in St. Clair County?

22 A. Yes.

1 Q. And you've previously testified in other
2 matters before the Illinois Commerce Commission
3 relating to this project, is that correct?

4 A. Yes.

5 Q. And with regard to the specific property
6 involved in this proceeding, proceeding being
7 T12-0163, could you describe the property that is
8 being sought by the department or for which the
9 department seeks approval to condemn?

10 A. Yes. This is a rectangular shaped parcel.
11 It contains 23,348 square feet and which we propose
12 to take -- it's a whole take.

13 Q. And with regards to the property
14 specifically, in front of you you have what's been
15 marked as Petitioner's Exhibit A with the case
16 caption on it, and that's a legal description, is it
17 not?

18 A. Yes, it is.

19 Q. And is that a true and accurate copy of the
20 legal description of the subject property that the
21 Department seeks to acquire?

22 A. Yes.

1 Q. And is it a true and correct copy of the
2 legal description attached as Exhibit A to the
3 petition that's filed herein?

4 A. Yes.

5 Q. And you have before you what's marked as
6 Exhibit B.

7 Can you describe that document?

8 A. Yes. This is the plat of highways
9 indicating a shaded green area which is the entire
10 take of parcel 8015122.

11 MR. FELDER: And for Mr. Von De Bur and for
12 Mr. Prendergast, and Mr. Shumate, Exhibits A and B
13 are copies of the documents that are attached to the
14 petition that's been filed. Sorry I don't have
15 copies for you in Chicago.

16 MR. SHUMATE: We have them.

17 Q. BY MR. FELDER: And was Exhibit B prepared
18 by or under the direction of the Department of
19 Transportation?

20 A. Yes.

21 Q. And does it accurately and fairly depict
22 the property that the Department seeks to acquire?

1 A. Yes, it does.

2 Q. Let me show you what's been previously
3 marked and prefiled in this matter as Petitioner's
4 Exhibit C which was filed in this proceeding,
5 T12-0163, and a related proceeding, T13-0034, and ask
6 you if you can describe that document.

7 A. Yes. This is a copy of what would come out
8 of the construction plans. It shows the property
9 lines and the proposed roadway improvements and the
10 highlighted green area of the parcels.

11 Q. And in the highlighted green area, there's
12 an indication with a box marked 122 and another box
13 marked 123 in red writing. Do you see that?

14 A. Yes.

15 Q. And is the area, the trapezoidal looking
16 area that bounds the 122 designation in Exhibit C, is
17 that the parcel that is the subject of this
18 proceeding?

19 A. Yes.

20 Q. And 123 which is kind of a long, curved
21 rectangular shaped piece of property, that's the
22 property that's the subject of T13-00134 [sic]?

1 A. Yes.

2 Q. Which is the subject of another matter
3 pending before the Commission, is that correct?

4 A. Yes.

5 MR. VON DE BUR: Excuse me just one moment. Is
6 that 134 or 34?

7 MR. FELDER: 34. If I said 134, it should have
8 been T13-0034 is the other proceeding.

9 MR. VON DE BUR: Okay.

10 Q. BY MR. FELDER: And is it your
11 understanding from investigating title with the title
12 company engaged by the Department for this project
13 that at this point in time, the party that seems to
14 be interested in this property that is the indicated
15 fee owner is the Burlington Northern Santa Fe Railway
16 Company?

17 A. Yes.

18 Q. And with regards to other possible railroad
19 interests, is it your understanding that those
20 interests have now been deleted from the title
21 commitments that have been obtained on behalf of the
22 Department for this acquisition?

1 A. Yes.

2 Q. And were those, to your knowledge, were
3 those updates made after sufficient documentation was
4 given from other possibly interested railroad parties
5 indicating either that it quit claimed or disclaimed
6 any interest in the subject property?

7 A. Yes.

8 Q. And that would include the KCS, the IC
9 Railroad, and the Union Pacific Railroad?

10 A. Yes.

11 Q. Does the Department need the property
12 that's designated as parcel 122? Actually, the full
13 designation is 8015122 which is designated and shown
14 on Exhibits A, B and C.

15 A. Yes.

16 Q. And does it need it at this time to
17 construct its improvement project in St. Clair
18 County?

19 A. Yes.

20 Q. Is the improvement that's proposed for
21 St. Clair County with the relocation of Illinois 3 in
22 the interest of public convenience and necessity?

1 A. Yes.

2 Q. And what will result if the Department is
3 unable or what results will occur or could occur if
4 the Department is unable to acquire the property that
5 it needs, parcel 122 in particular, at this time?

6 A. It would cause future delays on the
7 adjacent contracts, additional financial, and
8 possible utility delays as well.

9 Q. And is it your understanding through
10 communications involving negotiations that if, in
11 fact, now that certain title matters have been
12 cleared up, the Department can conclude this
13 acquisition with the BNSF through a voluntary
14 transfer that it will conclude this transaction in
15 that manner?

16 A. Yes.

17 Q. And in the event it doesn't, it will need
18 an order from the Illinois Commerce Commission
19 approving this acquisition and a subsequent action to
20 acquire the property in the Circuit Court in
21 St. Clair County?

22 A. Yes.

1 MR. FELDER: I don't have any other questions
2 on direct examination.

3 JUDGE DUGGAN: Okay. Mr. Prendergast?

4 MR. PRENDERGAST: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. PRENDERGAST:

7 Q. Is Exhibit A the exact exhibit that was
8 attached to the petition in this matter?

9 A. To my knowledge it is.

10 Q. Okay. And if you could take a look at
11 Exhibit A where in the top portion it indicates on my
12 copy owner, Union Pacific Railroad Company as to an
13 undivided half interest and Kansas City Southern
14 Railway Company as to an undivided half interest.

15 Is that on your Exhibit A?

16 A. No. Mine says BNSF Railway is the owner.

17 Q. Okay.

18 A. And I have a revised date here it looks
19 like on the bottom of, it must be 6-12, so this is
20 probably not the one that was attached.

21 Q. Okay. Yeah, the one that was attached to
22 the petition originally had the Union Pacific and the

1 Kansas City Southern as undivided half interests in
2 the parcel.

3 Is it your testimony that since
4 there's been further investigation that it's your
5 understanding that the owner is BNSF Railway Company?

6 A. Yes.

7 Q. Okay. And that's reflected on Exhibit A?

8 A. Yes.

9 Q. And that otherwise, the actual legal
10 description is the same that was attached to the
11 original petition?

12 A. Yeah. I believe the description itself is
13 the same. I think it was just that the owner was
14 updated.

15 Q. Okay. And as it currently stands, it's
16 your understanding that BNSF owns that property also
17 that's been identified as 8015122?

18 A. Yes.

19 Q. And I believe you've indicated that the
20 Kansas City Southern has issued a quitclaim for the
21 property, any interest that they may or could have
22 had?

1 A. That's my understanding.

2 Q. Okay. And both the Illinois Central and
3 the Union Pacific have filed disclaimer of any
4 interest in the property?

5 A. Yes.

6 Q. Okay. And at this point, at least I guess
7 insofar as this hearing is concerned, BNSF is the
8 only railroad that is actively claiming an interest
9 in the property?

10 A. Yes.

11 MR. PRENDERGAST: That's all the questions I
12 have. Thank you.

13 CROSS-EXAMINATION

14 BY JUDGE DUGGAN:

15 Q. Are there railroad tracks on this piece of
16 property?

17 A. No.

18 Q. Okay. Do you have any reason to believe
19 that transferring ownership of the property to the
20 State of Illinois will interfere with railroad
21 operations?

22 A. No.

1 JUDGE DUGGAN: Okay. Let's see, Mr. Shumate,
2 you're still on here as a party. Do you have any
3 questions?

4 MR. SHUMATE: No, Your Honor, I don't.

5 JUDGE DUGGAN: Okay. Mr. Von De Bur?

6 MR. VON DE BUR: No questions, Your Honor.

7 JUDGE DUGGAN: Back to Mr. Felder.

8 MR. FELDER: No redirect.

9 (Witness excused.)

10 MR. FELDER: And with that, I would offer
11 Exhibits A, B and C that have been previously marked
12 and to which Ms. Keplar testified to be admitted into
13 evidence.

14 JUDGE DUGGAN: All right. Any objection to the
15 admission of Exhibits A, B, C?

16 Mr. Prednisone?

17 MR. PRENDERGAST: No objection, Your Honor.

18 JUDGE DUGGAN: I didn't hear that.

19 MR. PRENDERGAST: No objection, Your Honor.

20 JUDGE DUGGAN: Mr. Shumate?

21 MR. SHUMATE: No objections, Your Honor.

22 JUDGE DUGGAN: Mr. Von De Bur?

1 MR. VON DE BUR: No objections, Your Honor.

2 JUDGE DUGGAN: Okay. Then Exhibits A, B and C
3 are admitted.

4 (Whereupon Petitioner's Exhibits
5 A, B and C were admitted into
6 evidence at this time.)

7 JUDGE DUGGAN: Mr. Prednisone, being the only
8 party named on the exhibit as having an interest
9 here, do you have a position on whether this taking
10 would interfere with railroad operations?

11 MR. PRENDERGAST: I don't believe it would,
12 Your Honor.

13 JUDGE DUGGAN: Very good. Thank you.

14 Mr. Von De Bur, staff's position?

15 MR. VON DE BUR: Staff has no objection to the
16 petition as filed.

17 JUDGE DUGGAN: Very good.

18 Anything else?

19 MR. FELDER: No, Your Honor. We would rest.

20 And I did submit, as I said, a draft
21 order to counsel, Mr. Von De Bur, before today. I
22 believe we'll be able to quickly conclude an order

1 that we can all agree to, and we'd like to get it to
2 you as quickly as possible to see if we can expedite
3 getting to the May 15th hearing.

4 JUDGE DUGGAN: Very good. Thank you.

5 Okay. The record is marked heard and
6 taken.

7 HEARD AND TAKEN.

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